IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.341 OF 2005

Shri.Bhupendra J.Parekh ...Applicant

Versus

Capt.Dilip V.Kopikar & Anr. ...Respondents

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Mr.Niranjan P.Shimpi for Applicant.

Ms.S.V.Gajare, A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 23, 2005.

P.C.

1. This Application takes exception to the order passed by the Additional Sessions Judge, Sessions Court, Greater Bombay dated 29th November 2004 in Criminal Revision Application No.453 of 2004. That revision was preferred questioning the order of issuance of process by the Magistrate. The Revision has been dismissed by the Revisional Court, as not maintainable relying on the decision of the Apex Court in the case of **Adalat Prasad vs.**

Rooplal Jindal & Ors. That is the only reason on which the Revision has been dismissed. That reason is not available in view of the recent decision of our High Court in the case of **V.K.Jain & Ors. vs. Pratap V.Padode reported in 2005(3) Mh.L.J. 778**, which decision, I am informed, has been affirmed by the Apex Court.

2. In the circumstances, the order in question will have to be set-aside as it is founded only on the reason which is no more tenable and the Revision Application will have to be restored to the file to its original number, to be considered by the Revisional Court on merits in accordance with law.

3. As this order is inevitable, in my view, the Application can be disposed of without burdening the Respondent No.1 of issuance of notice in the present proceedings, for, all questions are left open to be decided in the Revision Application, which I am inclined to restore to the file of the Sessions Court.

4. In the circumstances, I am disposing of this Application on the assumption that the Respondent No.1 will accept this direction and participate in the revision proceedings before the Revisional Court, which will have to be decided on merits in accordance with law.

5. Accordingly, this Application is disposed of by setting-aside the impugned order and restoring the Criminal Revision Application No.453 of 2004 to be decided on merits in accordance with law. That Revision Application be decided as expeditiously as possible, preferably within six weeks from the date of first appearance made by the Respondent No.1 pursuant to the fresh notice to be issued by that Court for reconsideration of the Revision Application on merits.

A.M.KHANWILKAR, J.